83-800

Office-Supreme Court, U.S.
FILED
OCT 10 1983
ALEXANDER L. STEVAS,
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

UNITED STATES OF AMERICA,
Respondent

v.

GERALD R. CICCONI,
Petitioner

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

HOWARD D. SCHER
MONTGOMERY, MCCRACKEN,
WALKER & RHOADS
Three Parkway, 20th Floor
Philadelphia, PA 19102
(215) 563-0650
Attorney for Petitioner

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

QUESTION PRESENTED

What is the proper unit of prosecution under 18 U.S.C. §2314; specifically, if a person steals one check in one place and a second check in another place and then cashes both in the same place, are there committed two offenses or is there committed one offense?

Proposed answer:

Two

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opinions Below	1
Statement of Jurisdiction	2
Statutes and Rules Involved	3
Statement of the Case	5
Argument	8
Conclusion	17
Appendix	A-1

TABLE OF AUTHORITIES

Cases: Page

Bins v. United States, 331 F.2d 390 (5th Cir. 1964), *cert. denied*, 379 U.S. 880 ..... 11, 12

Cabbell v. United States, 636 F.2d 246 (8th Cir. 1980) 12, 13, 14, 15

Gilinsky v. United States, 368 F.2d 487 (9th Cir. 1966) 13, 15

United States v. Freeman, 619 F.2d 1112 (5th Cir. 1980), *cert. denied*, 450 U.S. 910 9

United States v. Lubomski, 277 F.Supp. 713 (N.D. Ill. 1967) 8

United States v. Murray, 335 F.Supp. 792 (D. Minn. 1970), *aff'd*, 452 F.2d 503 (8th Cir. 1971), *cert. denied*, 405 U.S. 935 (1972) .. 8

United States v. Starks, 515 F.2d 112 (3d Cir. 1975) 8, 17

United States v. White, 524 F.2d 1249 (5th Cir. 1976), *cert. denied*, 426 U.S. 922 ..... 13, 15

Statutes:

18 U.S.C. §2314 ..... 8, 9, 14, 15

Rules:

Federal Rule of Criminal Procedure 8(a) 8

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

UNITED STATES OF AMERICA,

Respondent

v.

GERALD R. CICCONI,

Petitioner

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

None.

STATEMENT OF JURISDICTION

(i) The Judgment of which review is sought is dated, September 15, 1983. (App. p. 1).

(ii) The Petition for Rehearing filed on behalf of Gerald R. Cicconi before the United States Court of Appeals for the Third Circuit was denied by Order dated October 17, 1983. (App. p. 3).

(iii) Jurisdiction to review the Judgment in question is conferred on this Court by 28 U.S.C. §1254(1).

STATUTES AND RULES INVOLVED

18 U.S.C. §2314 provides as follows:

Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting.

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof —

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

STATEMENT OF THE CASE

A. *Procedural History*

This is an appeal of a criminal conviction for violation of 18 U.S.C. §2314, which prohibits interstate transportation of stolen securities.

In an Indictment filed on February 23, 1981, the petitioner ("Mr. Cicconi") and Messrs. Charles D. Cascio ("Cascio"), Peter V. DiGiulio ("DiGiulio") and Millard H. Sussman ("Sussman"), were charged in fourteen counts with various offenses against Video Systems Corporation ("VSC") and the United States. Counts I and II charged Cascio, DiGiulio, and Sussman with violations connected with the solicitation of proxies from VSC shareholders in 1976 and 1977 respectively. Count III charged Cascio with interstate transportation of checks stolen from VSC and Count IV charged the same crime against Cascio and Sussman. Counts V through VIII charged Mr. Cicconi and DiGiulio with interstate transportation of checks stolen from VSC. Count IX charged all four defendants with violating the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, et seq. Counts X through XII charged Cascio with income tax evasion, and Counts XIII and XIV charged the same offense against DiGiulio.

Prior to the trial of this case, Mr. Cicconi filed with the district court several motions, including a Motion to Dismiss Count VI of the Indictment for Duplicity. This Motion was denied.

On the eve of trial, Cascio, DiGiulio, and Sussman each entered pleas of guilty to one or more counts under the Indictment. Cascio pleaded guilty to three counts of the Indictment in this case, as well as to one count of a separate Indictment in another fraud case. The district court sentenced Cascio to thirty months in prison, to be followed by three years of probation, together with a $10,000 fine and agreed upon restitution. Sussman, who

received no personal monetary benefits from the crimes, was sentenced to probation.

DiGiulio pleaded guilty to Counts I and XV of the Indictment, and testified at Mr. Cicconi's trial that Mr. Cicconi was not involved in the schemes to defraud VSC. The district court sentenced DiGiulio to nine months in prison on each count and fined him $20,000.

The trial of Mr. Cicconi commenced with jury selection on September 23, 1981, and lasted for seven days. On October 2, 1981, the jury returned a verdict of acquittal on Counts V, VIII, and IX of the Indictment, and a verdict of guilty on Counts VI and VII, which two counts charged Mr. Cicconi with causing the transportation of three checks having a total value of $55,120. On October 8, 1981, Mr. Cicconi, by his trial counsel, submitted to the district court a Motion for a New Trial or a Judgment of Acquittal. This Motion was superseded by a second Motion for a New Trial or a Judgment of Acquittal, filed by new counsel, on May 13, 1981. This Motion was denied by Order dated September 21, 1982.

The district court entered its Judgment and Probation/Commitment Order on January 25, 1983. (App. p. 4). The terms of that Order are that Mr. Cicconi is to be incarcerated for a period of four years, or 48 months, on each of Counts VI and VII, the terms to run concurrently, and that Mr. Cicconi is to pay fines of $10,000 on each count, for a total of $20,000.

An Appeal of Mr. Cicconi's convictions was taken to the United States Court of Appeals for the Third Circuit. A Notice of Appeal was filed on February 2, 1983. A Brief in Support of this Appeal was filed with the Court on April 18, 1983. This Brief raised four issues, including the duplicitous nature of Count VI of the Indictment. The Government filed its Brief in response on May 14, 1983. A Reply Brief was filed by Mr. Cicconi on May 31, 1983. By Order dated September 15, 1983, a panel of the Third Circuit affirmed the judgment of the district court.

(App. p. 1). A Petition for Rehearing was filed with the Third Circuit on October 4, 1983. By Order dated October 17, 1983, that Court denied Mr. Cicconi's Petition. (App. p. 3).

Mr. Cicconi is currently free on bail of $25,000 pending this appeal.

B. *Statement of Facts Relevant to the Issue Presented for Review*

Count VI of the Indictment charges Mr. Cicconi and DiGiulio with transporting or causing to be transported in interstate commerce two checks knowing the checks to have been stolen, converted, or taken by fraud, in violation of 18 U.S.C. §2314. The first check referred to in Count VI is VSC check number 22271 dated April 8, 1976, payable to S.I. (Systems Industries). The second check referred to is VSC check number 22275 dated April 8, 1976, and payable to Murphy Trane. Systems Industries and Murphy Trane are unrelated entities, and these checks had no connection to one another. On May 22, 1981, Mr. Cicconi filed a Motion to Dismiss Count Six of the Indictment for Duplicity. This Motion was denied.

During trial, Mr. Cicconi and the Government entered into a stipulation as to the testimony of a bank officer. That stipulation included the provision that the bank officer would testify that the two checks referred to in Count VI were both deposited into the checking account of Mark-Serv Company at Midlantic National Bank on April 9, 1976, and that both checks were transported on April 12, 1976, at the same time by bank courier from Midlantic National Bank in Haddonfield, N.J., to the Federal Reserve Bank in Philadelphia, Pennsylvania, as part of the check clearing process.

ARGUMENT

Count VI of the Indictment charged Mr. Cicconi with interstate transportation of two checks in violation of 18 U.S.C. §2314. Under Rule 8(a) of the Federal Rules of Criminal Procedure, two or more offenses can be joined in a single indictment if they are similar in nature, based upon the same transaction, or constitute part of a common scheme. When such offenses are joined, however, each must be set forth in a separate count. *United States v. Lubomski*, 277 F.Supp. 713, 716 (N.D.Ill. 1967). When two or more separate offenses are charged in a single count of an indictment, the count is duplicitous. *United States v. Murray*, 335 F.Supp. 792 (D.Minn. 1970), *aff'd*, 452 F.2d 503 (8th Cir. 1971), *cert. denied*, 405 U.S. 935 (1972). Duplicitous indictments are prohibited because of the numerous potential prejudices they pose to an accused. In *United States v. Starks*, 515 F.2d 112 (3d Cir. 1975), the court described these prejudices as follows:

> Duplicity is the joining in a single count of two or more distinct and separate offenses. One vice of duplicity is that a general verdict for a defendant on that count does not reveal whether the jury found him not guilty of one crime or not guilty of both. Conceivably this could prejudice the defendant in protecting himself against double jeopardy. Another vice of duplicity is that a general verdict of guilt does not disclose whether the jury found the defendant guilty of one crime or of both. Conceivably, this could prejudice the defendant in sentencing and in obtaining appellate review. A third vice of duplicity is that it may prejudice the defendant with respect to evidentiary rulings during the trial, since evidence admissible on one offense might be inadmissible on the other. . . . Finally, *there is no way of knowing with a general verdict on two separate offenses joined in a single count whether the jury was unanimous with respect to either.*

Id. at 116-17 (footnotes omitted) (emphasis added).

The elements which must be proved in order to establish a violation of 18 U.S.C. 2314 are "(1) interstate transportation of a stolen, converted, or fraudulently taken check of at least $5,000 value (2) with fraudulent intent." *United States v. Freeman*, 619 F.2d 1112, 1117 (5th Cir. 1980), *cert. denied*, 450 U.S. 910.

THE ISSUE PRESENTED TO THE JURY CONCERNED MR. CICCONI'S STATE OF MIND

At trial the principal, perhaps only, issue presented to the jury was whether Mr. Cicconi knew that these checks had been stolen, converted, or taken by fraud. The district court instructed the jury that, "The issue here, and I think all sides will concede, is whether or not Mr. Cicconi, the defendant in this case, had knowledge concerning these checks when he deposited them which in turn caused them to be transported from the clearing house to the bank in New Jersey." This point was reemphasized by the court when it stated that, "And, I think, Ladies and Gentlemen, as counsel argued to you, that is the crux of this case and that is the issue which you're going to have to decide. What was the state of knowledge on the part of Mr. Cicconi at the time of these transactions as occurred back in April of 1976."

Thus, the issue placed before the jury regarding each count, and each check, was not whether Mr. Cicconi deposited the checks or caused their interstate transportation, or even whether the checks were obtained by fraud, but rather was whether Mr. Cicconi *knew* that the checks were obtained by fraud. In response to this mandate, the jury acquitted Mr. Cicconi of Counts Five and Eight of the Indictment, which also charged interstate transportation of fraudulently obtained checks.

THE GOVERNMENT'S BRIEF DEMONSTRATES THAT TWO SEPARATE SCHEMES UNDERLIE THE TWO CHECKS IN COUNT SIX

The Brief submitted by the Government to the panel of the Third Circuit which considered Mr. Cicconi's appeal conceded in its Statement of Facts that there is no particular relationship between the two checks incorporated in Count Six other than the fact that they were transported interstate at the same time. Two separate schemes are alleged in the Statement of Facts. The first scheme, characterized by the Government as "Video Systems Funds Are Diverted to the Mark Serv Company through the Use of Checks for Construction Work," involves the Murphy Trane check referred to in Count Six and another check referred to Count Seven. The second scheme, characterized as "Video Systems Funds Are Diverted to the Mark Serv Company through the Use of a Forged Endorsement," involved the Scientific Industries check referred to in Count Six. Thus, the Government acknowledges that Count Six involves two checks which are properly characterized as being part of two separate schemes.

The Government's Brief sets forth in detail the circumstances of the separate frauds which are alleged to underlie the two checks. The debts which the checks were purported to cover were owed to separate entities, one to Murphy Trane and one to Systems Industries. The debts were incurred by two entities, one by Mark Serv Co. and one by Scientific Measurement Systems. The debt to Murphy Trane is alleged to have been paid by Mr. Cicconi. The debt to Systems Industries is alleged to have been written off by the debtor. The Murphy Trane check was alleged to have been endorsed by the payee, the Systems Industries check to have a forged endorsement. Mr. Cicconi is alleged to have requested from Murphy Trane an invoice made out to Video Systems Corporation, the issuer of both checks, while he is

not alleged to have had a direct connection to the issuance of the Systems Industries check by Video Systems Corporation. The Murphy Trane check is alleged to have been ultimately credited to Mr. Cicconi's capital account in the Mark Serv Company, the Systems Industries check credited to the capital account of Mr. Cicconi's co-defendant.

The foregoing statement of the Government's case establishes that under the Government's formulation of the evidence, but not the Indictment, the Murphy Trane and Systems Industries checks were obtained at different times and places by different individuals under the ruse of paying unrelated debts to different entities and were eventually utilized for different purposes. Clearly, the presentation of the case regarding each check required different witnesses and different evidence.

The crux of the issue before the jury was whether Mr. Cicconi was a knowing participant in the separate frauds underlying each check, or whether he was merely performing the essentially ministerial function of depositing each check. Obviously, the jury's conclusions as to Mr. Cicconi's state of mind regarding each check could differ.

A GENERAL VERDICT OF GUILTY FOR TWO SEPARATE OFFENSES CANNOT BE INTERPRETED AS UNANIMOUS WITH RESPECT TO EITHER

Where two offenses are charged in a single count, the count is duplicitous and a general verdict of guilty cannot stand.

In *Bins v. United States*, 331 F.2d 390 (5th Cir. 1964), *cert. denied*, 379 U.S. 880, the defendant was charged with making false statements in connection with an F.H.A. loan application. The indictment charged in a single count that false statements were made on each of two separate documents. The court held that this count alleged two separate offenses, stating, "[I]t is well

settled that the test for determining whether several offenses are involved is whether identical evidence will support each of them, and if any dissimilar facts must be proved, there is more than one offense." 331 F.2d at 393. Having determined that the indictment was duplicitous, the court described the infirmity of the indictment as follows:

> The failure to correct the duplicitous nature of the indictment in some manner was error. This becomes clear when you try to determine what the jury found. The jury cannot find a defendant guilty as to one of the offenses charged in the duplicitous count and not guilty as to the other charge in the same count; and a general verdict of guilty does not reveal whether the jury found the defendant guilty of one crime and not guilty of the others, or guilty of all of them.

331 F.2d at 393.

In this case, it is clear that the two offenses alleged in Count Six were each supported by different evidence, since they were allegedly part of separate schemes. Thus, Mr. Cicconi was exposed to the prejudices of a duplicitous indictment identified in *Bins*.

JUDICIAL DISAGREEMENT IN INTERPRETING 18 U.S.C. §2314

The Government's Brief never embraces any specific test for determining whether Count Six is duplicitous, never cites a case where a similar count has been held to be proper, and actually never specifically states, other than in the heading to the argument, that Count Six is not duplicitous. The Government's confusion is attributable to the inconsistent interpretation of 18 U.S.C. §2314 among the Circuit Courts of Appeals.

The most thorough explanation of the divergent interpretations of §2314 is contained in *Cabbell v. United*

States, 636 F.2d 246 (8th Cir. 1980). The evidence established that Cabbell had caused the negotiation of fifteen stolen money orders. The money orders were negotiated five at a time in three separate transactions at three separate banks in one day. The money orders then were transported interstate according to normal bank clearing procedures. Cabbell was convicted of fifteen counts of violating §2314, one for each check. The district court imposed consecutive sentences and Cabbell appealed, arguing that he received multiple sentences for a single offense. The United States Court of Appeals for the Eighth Circuit held that Cabbell could properly be convicted of only three offenses and remanded the case for resentencing.

The *Cabbell* court identified two approaches to determining "the proper prosecutorial unit" under §2314. 636 F.2d at 247. The first approach looks to the number of actual interstate transportations allegedly caused by the defendant, regardless of the number of transactions or checks passed. The indictment is structured upon the number of times a bank courier transports the checks across state lines, not the number of individual checks. *See Gilinsky v. United States*, 368 F.2d 487, 489-90 (9th Cir. 1966).[1]

The second approach identified in *Cabbell* for determining the "unit of prosecution" depends upon the number of separate transactions during which checks were negotiated, rather than the number of separate transportations or checks. Under this approach, where two checks are negotiated at different times on the same day in the same store, are simultaneously deposited by

---

1. This is the approach which the Government used in this case. Both checks referred to in Count Six were stipulated at trial to have been deposited on the same date and transported together. Thus the Government determined that one transportation equalled one offense. This approach ignores the element of fraudulent intent required in proving a violation of §2314. *See* pages 14-16, *infra*.

the merchant in his bank account, and presumably are transported interstate together through normal bank channels, two violations of §2314 have occurred. *See United States v. White*, 524 F.2d 1249, 1254 (5th Cir. 1975), *cert. denied*, 426 U.S. 922 (1976).[2]

In *Cabbell* the court held that under either of the two approaches, the defendant had committed three offenses, not fifteen. There had been three separate transactions at three separate banks. Applying the "number of transportations" test, the court presumed that the checks negotiated at one bank at one time were transported together, but would not presume that checks negotiated in one day at separate banks in the same small town and destined for the same distant city were transported together. Therefore, there were three transportations and three offenses. Applying the "number of transactions" test, the court relied on the fact that there were three separate transactions involving five checks each. Thus, under this test there were also three offenses.

THE NUMBER OF OFFENSES IN COUNT SIX CANNOT BE DETERMINED BY A MECHANISTIC APPROACH

The approaches to determining the proper unit of prosecution discussed above do not provide clear guidance for resolving the facts of this case. The essential consideration which is overlooked, because not relevant, in the cases cited above is that a conviction under §2314

---

2. Under this approach, it could be argued that Count Six charges only one offense. It was stipulated at trial that both checks included in Count Six were deposited on the same day. The record is silent on whether the checks were deposited at the same time. If evidence were produced at a second trial of a single transaction by Mr. Cicconi involving both checks, this might support the current structure of Count Six. However, this approach again ignores the element of intent which must be proved with regard to each individual check. *See* pages 14-16, *infra*.

requires proof both that the defendant transported or caused the transportation interstate of a security *and* that he did so with the knowledge that the security was stolen, converted, or obtained by fraud. In previous cases where the issue concerned whether the number of offenses was controlled by the number of transportations or the number of transactions, the required element of knowledge and intent was, unlike this case, always resolved by identical evidence regarding each check. If the defendant knew that one check was stolen, then he knew that they were all stolen. Consequently, the proper unit of prosecution could be determined by applying one or the other analysis to the mechanics of the transaction.

In *Cabbell v. United States*, 636 F.2d 246 (8th Cir. 1980), each of the fifteen forged money orders involved was originally stolen in a single armed robbery of a drug store. In *Gilinsky v. United States*, 368 F.2d 487 (9th Cir. 1966), the defendant pleaded guilty, thereby admitting his fraudulent intent regarding each check. In *United States v. White*, 524 F.2d 1249 (5th Cir. 1975), *cert. denied*, 426 U.S. 922 (1976), the defense was "insanity." 524 F.2d at 1253. Apparently an alcoholic, White argued unsuccessfully that he could not form the required intent to commit any offense. *Id.*

This case, for the first time, presents circumstances in which the number of violations of §2314 is determined by neither the number of transportations nor the number of transactions. Instead, the controlling factor is the statutory element of *intent*, which was the controlling issue placed before the jury by the district court.

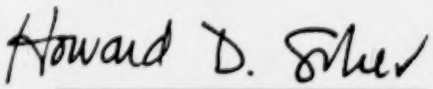
In order to be convicted of transporting interstate two checks in violation of §2314, Mr. Cicconi must be proven to have known that *each* check was stolen, converted, or obtained by fraud. In this case the evidence of intent or knowledge as to each check was entirely separate. The Government has acknowledged that the checks represented the fruits of two separate alleged schemes. The depositing of each check, therefore, repre-

sents a separate offense, regardless of whether the checks were transported or deposited individually or together. Consequently, Count Six is duplicitous and must be dismissed.

CONCLUSION

Mr. Cicconi is entitled to have each offense charged against him considered separately and completely by a jury. He is entitled to a unanimous verdict which clearly precludes the possibility that the jury disagreed as to his knowledge or intent regarding either check. Nothing less satisfies the Constitutional guarantee of a fair trial or the requirements of *United States v. Starks*, 515 F.2d 112 (3d Cir. 1975).

Respectfully submitted,



HOWARD D. SCHER
MONTGOMERY, MCCRACKEN
WALKER & RHOADS
Three Parkway, 20th Floor
Philadelphia, PA 19102
(215) 563-0650
Attorney for Appellant

CERTIFICATE OF SERVICE

I, HOWARD D. SCHER, hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari were served upon the following at the following addresses by first-class United States Mail, postage prepaid, on October 24, 1983:

Solicitor General
Department of Justice
Washington, D.C. 20530

Robert E. Courtney, III, Esquire
Special Attorney
Philadelphia Strike Force
Suite 700
615 Chestnut Street
Philadelphia, PA 19106

Howard D. Scher

HOWARD D. SCHER

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1088

UNITED STATES OF AMERICA

v.

GERALD R. CICCONI,

Appellant

(Criminal No. 81-00050-50-04 — E.D.Pa.)

District Judge: Honorable Joseph McGlynn, Jr.

Submitted Under Third Circuit Rule 12(6)
September 15, 1983

Before: SEITZ, *Chief Judge*,
GIBBONS and ROSENN,
Circuit Judges.

JUDGMENT ORDER

After consideration of the contentions raised by appellant, to-wit, that the district court erred (1) in refusing to grant appellant's motion to dismiss count six of the indictment for duplicity for the reason that it charges two separate crimes in one count, (2) in permitting the government to cross-examine the appellant's character witnesses about two newspaper articles which were not pertinent to the character traits in issue, not confined to specific instances of conduct by the appellant, and which concerned matters that occurred after the events underlying the indictment in this case, (3) in permitting the government to make closing argument to the jury

which consisted of speculation unsupported by the record concerning the appellant's motives in extending loans to the corporation the appellant is accused of defrauding, and (4) in considering at time of sentencing evidence which was provided to the government in a separate government investigation under the express understanding that it could not be used as evidence for any purpose in any proceeding other than the one in which it was sought, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

_____

Chief Judge

Attest:

_____

Sally Mrvos, Clerk

Dated: September 20, 1983

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1088

UNITED STATES OF AMERICA

v.

GERALD R. CICCONI,

Appellant

(Criminal No. 81-00050-04 — E.D.Pa.)

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, and ROSENN, *Circuit Judges*,

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

COLLINS J. SEITZ
Chief Judge

Dated: October 17, 1983

United States of America vs.

United States District Court fo

DEFENDANT: GERALD R. CICCONI

EASTE[illegible] DISTRICT OF PENNSYLVANIA

DOCKET NO. Crim. 81-00050-04

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government Robt. E. Courtney, III the defendant appeared in person on this date — MONTH DAY YEAR: January 25, 1983

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Carmen C. Nasuti, Esq. and Howard D. Scher, Esq.
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. as to Counts 6 and 7 only.

JAN 27 REC'D

Defendant has been convicted as charged of the offense(s) of transportation of stolen or converted securities in interstate commerce [18 U.S.C. §2314] on each of Counts 6 and 7;

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR (4) YEARS on each of Counts 6 and 7; said terms of imprisonment to run concurrently each with the other. IT IS FURTHER ORDERED that on each of Counts 6 and 7 defendant is to pay unto the United States of America a FINE in the amount of TEN THOUSAND DOLLARS ($10,000.00) for a total Fine of Twenty Thousand ($20,000.00) Dollars.

Execution of said sentence is hereby STAYED pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, a minimum security institution.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

JOSEPH L. McGLYNN, JR.

DATE 1/25/83

000004